

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CARY COSGROVE,

Plaintiff,

CASE NO. 1:15-CV-926

v.

HON. ROBERT J. JONKER

TONY TRIERWEILER, *et al.*,

Defendants.

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

The Court has reviewed Magistrate Judge Kent's Report and Recommendation in this matter (ECF No. 91). The Court has also reviewed Plaintiff's Motion for Extension to file Response to the Report and Recommendation (ECF No. 92), which the Magistrate Judge denied for lack of good cause shown (ECF No. 94). There are no objections properly before the Court. Though not required to do so absent a proper objection to the Report and Recommendation,¹ the Court in this unusual instance has reviewed de novo the claims and evidence presented to the Magistrate Judge and the

¹ Under the Federal Rules of Civil Procedure, where a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED.R. CIV. P. 72(b). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

Report and Recommendation itself. After its review, the Court finds that Magistrate Judge Kent's Report and Recommendation is factually sound and legally correct.

The Magistrate Judge carefully and thoroughly considered the evidentiary record, the parties' arguments, and the governing law. The Magistrate Judge recommends granting summary judgment in favor of defendants Normington, Avery, O'Connor, Hickock, and Merano based on Plaintiff's failure to exhaust. (ECF No. 91.) Plaintiff has had multiple opportunities to come forward with evidence to rebut the defendants' well-supported exhaustion motion. What has become clear is that Plaintiff himself concedes he did not properly exhaust, and that the defense evidence on this point is correct. What Plaintiff apparently wants to argue is that he should not be required to exhaust because the MDOC required him to use an internal office mail system, rather than provide him postage for U.S. Mail. (*See, e.g.*, PageID.476-77.) Plaintiff's disagreement with the rules does not amount to an excuse for admittedly not following them. For the same reason, there is no good cause to grant Plaintiff yet another extension. He has already admitted he did not follow the exhaustion rules, and in the seven months the defense motion has been pending, Plaintiff has come forward with nothing other than his persistent disagreement with the exhaustion rules. The Court agrees with the Magistrate Judge's conclusion that summary judgment in favor of defendants Normington, Avery, O'Connor, Hickock, and Merano based on Plaintiff's failure to exhaust is appropriate, for the very reasons the Report and Recommendation details.

The Court notes that Plaintiff has filed two motions for injunctive relief (ECF No. 73, ECF No. 87) raising claims outside the scope of this case with allegations against individuals not named in this case. These motions are not properly before the Court and must be dismissed.

ACCORDINGLY, IT IS ORDERED:

1. The Report and Recommendation of the Magistrate Judge (ECF No. 91) is approved and adopted as the opinion of the Court.
2. The Motion for Summary Judgment filed by defendants Normington, Avery, O'Connor, Hickock, and Merano (ECF No. 40) is **GRANTED**.
3. Plaintiff's Motions for Injunctive Relief (ECF No. 73 and ECF No. 87) are **DISMISSED**.
4. For the same reasons that the Court dismisses the action, the Court discerns no good-faith basis for an appeal within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997).

This case is **DISMISSED**.

Dated: September 26, 2016

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE

